

SUPREME COURT  
OF THE STATE OF WASHINGTON

KEVIN DOLAN and a class of  
similarly situated individuals,

Respondents,

v.

KING COUNTY, a political subdivision  
of the State of Washington,

Appellant.

NO. 82842-3

REPLY IN SUPPORT OF  
MOTION TO STRIKE  
THE CLASS'S ANSWER  
REGARDING FURLOUGHS  
AND TO IMPOSE  
SANCTIONS

A. INTRODUCTION AND RELIEF REQUESTED

King County ("County") has received the class's response opposing the County's motion to strike its improper answer about furloughs and the accompanying declarations of Anne Daly and Eileen Farley. The Court should grant the County's motion and impose the appropriate sanctions under RAP 18.9 where the class *admits* its deliberate misconduct.

B. ARGUMENT

The class *admits* it purposely ignored the Rules of Appellate Procedure ("rules") by submitting additional evidence to this Court that is not part of the record on review and that this Court's Commissioner explicitly ruled could not be submitted to the Court. Class Resp. at 2-3. The class attempts to justify this misconduct by restating facts irrelevant to

the furlough question from the Court and rehashing arguments already rejected by the Commissioner in. *Id.* at 1-5. Although the class admits the Commissioner rejected its arguments when he denied the original motion to supplement the record, it fails to acknowledge the impact of the Commissioner's ruling: the declarations are *not* part of the record on review. The class has not provided any basis to admit them now. If the class was unhappy with the Commissioner's ruling, then it should have timely moved to modify the ruling under RAP 17.7. It did not do so. The class is not entitled to "set the record straight" with evidence not in the record. Comm'r Ruling at 7.

The only issue here is not the past history of the furlough issue recounted in the Commissioner's Ruling, but rather a simple question from the Court during oral argument: was the County OPD budget reduction associated with furloughs negotiated? Contrary to the class's assertion in its response at 5 that the County erroneously represented the facts to the Court during oral argument, the County's budget furloughs and their impact on the corporations were negotiated. The Council reduced the budget for OPD. In turn, OPD negotiated a contractual allotment reduction with the four defender corporations. The funding reductions that developed from the furloughs impacted the corporations' overall contract compensation. The corporations, however, were free to absorb

the reductions as each corporation and board saw fit.<sup>1</sup> Hocraffer Decl. at 2. At the *corporations' request*, the funding reductions were imposed as a "below the line" lump sum. *Id.*

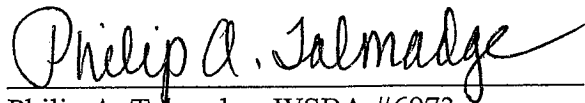
The class was subject to a Commissioner's ruling rejecting the declarations at issue here. It admits that it violated that ruling and offers nothing to excuse its misconduct. Accordingly, sanctions under RAP 18.9 are appropriate.

C. CONCLUSION

The Court should grant the County's motion to strike and impose the appropriate sanctions under RAP 18.9 where the class admits its deliberate misconduct.

DATED this 10th day of November, 2010.

Respectfully submitted,



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<sup>1</sup> The corporations could have chosen not to employ furloughs, but the public relations impact of such a decision would have been negative when prosecutors and court staff were taking furloughs.

DECLARATION OF SERVICE

On said day below I emailed and deposited in the US mail a true and accurate copy of the following document: Reply in Support of Motion to Strike the Class's Answer Regarding Furloughs and to Impose Sanctions in Supreme Court Cause No. 82842-3 to the following:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: November 10, 2010, at Tukwila, Washington.

  
Paula Chapler  
Talmadge/Fitzpatrick

DECLARATION